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January 8, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA FEDERAL EXPRESS -- AM DELIVERY

Ms. Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket Number 92-263

Dear Ms. Searcy:

I am transmitting herewith, on behalf of Adelphia Communications Corporation ("Adelphia"), an original and nine copies of Adelphia's Comments in the above-referenced proceeding.

I have also enclosed an additional copy of Adelphia's Comments, which I request that you date-stamp and return to me in the enclosed self-addressed stamped envelope.

Should there be any questions regarding the foregoing, please contact me directly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John B. Glicksman', with a stylized flourish at the end.

John B. Glicksman
Assistant General Counsel

JBG/kjs

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)
)
Implementation of Section 8 of the) MM Docket
Cable Television Consumer Protection and) No. 92-263
Competition Act of 1992)
)
Consumer Protection and Customer)
Service)

COMMENTS OF ADELPHIA COMMUNICATIONS CORPORATION

Adelphia Communications Corporation ("Adelphia") hereby comments on the Commission's Notice of Proposed Rule Making ("NPRM") issued in the above-referenced matter.

In its NPRM, the Commission states that it is seeking comment on the adoption and implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). Section 8 of the Cable Act of 1992 requires that the Commission prescribe standards governing cable consumer service by April 3, 1993.

It appears that, as a procedural matter, the Commission may be limited in the types of regulations that it may promulgate based upon the content of the NPRM. As noted below, to appropriately promulgate regulations, the Commission must give adequate notice of the actions it proposes to take; the NPRM, however, gives limited notice as to what the Commission presently contemplates.

The Administrative Procedure Act, 5 U.S.C. §551 et seq. ("APA"), requires that in issuing a general notice of proposed rule making, the Commission shall provide the public with either the terms or substance of a proposed rule or a description of the subjects and issues involved. See 5 U.S.C. §553(b)(3). In practice, this requirement means that the Commission must provide sufficient factual detail and rationale to permit interested parties to comment meaningfully. See Florida Power & Light Company v. U.S., 846 F.2d 765, cert. denied, 109

S.Ct. 1952, 490 U.S. 1045, 104 L.Ed.2d 422. The Commission is not obligated to describe every precise proposal, see Daniel Intern. Corp. v. Occupational Safety and Health Review Commission, 656 F.2d 925 (4th Cir. 1981), but the Commission is obligated to tell the public what it intends to do, see American Public Gas Association v. Federal Power Commission, 498 F.2d 718 (D.C. Cir. 1974). The Commission may not merely address relevant subjects, see Kollett v. Harris, 619 F.2d 134 (1st Cir. 1980); rather, the Commission must set forth the substance of the proposed action, see National Indus. Traffic League v. U.S., 396 F.Supp. 456 (D.D.C. 1975).

It does not appear that the Commission has included in its NPRM the kind of notice of proposed action that is contemplated by the APA; accordingly, it appears that the Commission's ability to promulgate valid regulations on the basis of the NPRM is limited. The Commission provides limited notice, for example, as to how it intends for customer service standards to be enforced. Noting that, as an historical matter, customer service standards have not been imposed or enforced by the Federal government, the Commission points out that Congress did not specify the mechanism whereby the Commission's standards are to become "service requirements" for local cable system operators. NPRM, at ¶ 4. The Commission also acknowledges candidly that the Commission is uncertain even as to Congress' intent with regard to the functioning of the enforcement process. *Id.* In this context, it is difficult to see how it can be said that the Commission is giving the public adequate notice of how it intends for customer service standards to be enforced.

Similarly, the Commission provides limited notice regarding, as the Commission phrases it, the "role and impact of any Federal standards adopted." NPRM, at ¶ 5. More specifically, the Commission notes the existence of several questions involving the relationship of any Federal standards, state and local laws, and franchise agreements; the Commission generally poses inquiries, however, without setting forth answers that would indicate how the Commission intends any Federal standards to interact with other laws and agreements.

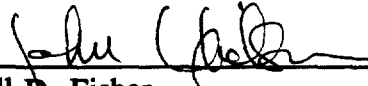
The Commission also provides limited notice with regard to the actual standards it proposes to adopt. Here, the Commission discusses to some extent customer service standards recommended by NCTA; this discussion, however, appears rarely to go beyond reciting the substance of NCTA's standards. Moreover, beyond such recitals, the Commission sets forth very little regarding any alternative approaches.

The Cable Act of 1992 states that the Commission must prescribe standards governing cable customer service by April 3, 1993. In the context of other regulations that the Cable Act of 1992 requires the Commission to prescribe, it is clear that the Commission does not have an abundance of time or resources to fulfill its obligations under the Cable Act of 1992. These

facts do not relieve the Commission, however, of its need to fulfill its obligations under the APA. Accordingly, the Commission must ensure that it gives the public fair notice of what it intends to do, and that it does not allow the time frame imposed on it by Congress to force it to promulgate regulations other than in accordance with the requirements of applicable law.

Respectfully submitted,

ADELPHIA COMMUNICATIONS CORPORATION

By  _____

Randall D. Fisher

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January 11, 1993

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